

UNCLASSIFIED
ACTION 10-15

Department of State 1/30/79

INCOMING
TELEGRAM

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OCT-01 ARA-11 ISO-00 CIAE-00 DODE-00 PH-05 H-01
INR-10 L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15
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SECTION 1 OF 2 BUENOS AIRES 00850

E.O. 12065 GDS 1-30-85 (WALLMAN, WILLIAM H.) OR-P
TAGS SHUM, AR
SUBJECT VISIT OF THE INTER-AMERICAN HUMAN RIGHTS COMMISSION TO
ARGENTINA: HOW CAN WE ENHANCE ITS SUCCESS?

REF: BUENOS AIRES 00677; BUENOS AIRES 1554

1. ENTIRE TEXT.

2. SUMMARY. THE VISIT HERE OF THE INTER-AMERICAN HUMAN RIGHTS COMMISSION CAN BE AN IMPORTANT EVENT IN PROMOTING THE OBSERVANCE OF HUMAN RIGHTS AND GETTING THE GOA TO BRING ITS FORCES UNDER CONTROL AND REDUCE HUMAN RIGHTS VIOLATIONS. THIS MESSAGE CONTAINS THE EMBASSY'S VIEWS ON AREAS WHERE WE BELIEVE THE RIGHT KIND OF COMMISSION EFFORT WOULD HAVE POSITIVE EFFECT -- BOTH SHORT-RANGE AND OVER A LONGER PERIOD. THESE AREAS ARE: CENTRALIZATION OF THE REPRESSIVE EFFORT, PROVIDING MEANS FOR JUDICIAL OVERSIGHT OF EXECUTIVE POWER ACTIONS, WORKING TOWARD "CONSENSUS DEFINITIONS OF "TERRORISM" AND "SUBVERSION" THAT NOT EVERY GUN TOLER IS FREE TO PURSUE HIS OWN IDEAS, HIGHLIGHTING THAT HUMAN RIGHT VIOLATIONS CONTINUE EVEN NOW LONG AFTER TOP LEADERS ASSURE THE COUNTRY THE WAR AGAINST SUBVERSION HAS BEEN WON, REQUIRING BETTER TREATMENT OF (FEWER AND FEWER) PRISONERS AND EXTERMINATING THE USE OF TORTURE, FORCING OUT REVELATIONS OF REMAINING CLANDESTINE PRISONERS, AND AMELIORATING THE SITUATION OF THE FAMILIES OF "DISAPPEARED" THROUGH NEW LEGAL-CIVIL DEFINITIONS. IF THE DEPARTMENT AGREES, WE HOPE THESE VIEWS CAN BE SHARED WITH COMMISSION MEMBERS. END SUMMARY.

3. WE HOPE THAT THE VISIT OF THE INTER-AMERICAN HUMAN RIGHTS COMMISSION TO ARGENTINA (SCHEDULED NOW FOR MAY 29-JUNE 6) WILL BE A MAJOR EVENT IN THE WAY THE GOVERNMENT SEES ITS OWN REQUIREMENTS AND PROSPECTS IN THIS AREA.

4. FIRST, WE HOPE THE COMMISSION'S REPORT WILL HAVE THE TOUGHNESS, EVIDENTIARY WEIGHT AND FAIRNESS THAT WILL MAKE THE DOCUMENT ACCEPTABLE TO A WIDE SPECTRUM OF ARGENTINES AS A DEFINITIVE STATEMENT. WE WANT THE DOCUMENT TO HAVE IMPACT IN FORMING PUBLIC OPINION HERE. ARGENTINES -- INCLUDING MEMBERS OF THE MILITARY FORCES AND GOVERNMENT -- HAVE TOO LONG BEEN TREATED TO PARTIAL, ANECDOTAL AND BIASED TREATMENT OF THIS COUNTRY'S APPALLING HUMAN RIGHTS HISTORY. ATTEMPTS BY OUTSIDE GROUPS, NOTABLY AMNESTY INTERNATIONAL, TO DESCRIBE THE SITUATION HERE HAVE BEEN TOO EASILY DISMISSED AS PROPAGANDA EFFORTS BY INIMICAL GROUPS OR AS THE SUPERFICIAL EXAMINATIONS OF BLEEDING HEARTS WHO DO NOT UNDERSTAND THE REALITIES OF ARGENTINA'S "DIRTY WAR." WE BELIEVE THE COUNTRY'S BETTER APPRECIATION OF REALITY IS A PREREQUISITE FOR REAL IMPROVEMENT. (IN THE TERM "THE COUNTRY" WE INCLUDE GOVERNMENT MEMBERS THEMSELVES, AS WELL AS POTENTIAL PRESSURE GROUPS LIKE THE CHURCH, PROFESSIONAL ORGANI-

ZATIONS AND THE BUSINESS COMMUNITY.)

5. NEVERTHELESS WE BELIEVE THE COMMISSION'S PRINCIPAL FUNCTION OF PROMOTING THE OBSERVATION OF HUMAN RIGHTS WILL BE BETTER SERVED IF IT GOES BEYOND FACT-FINDING AND CONDEMNATION. A PART OF THE ARGENTINE REALITY IS THAT THE GOVERNMENT HAS MADE EFFORTS ALREADY TO IMPROVE THE HUMAN RIGHTS SITUATION. THERE ARE FEWER PEN PRISONERS. TOTAL NUMBERS OF "MITS" BY SECURITY FORCES ARE DOWN AS COMPARED WITH YEARS PREVIOUS. THIS SHOULD BE ADDRESSED.

6. ACKNOWLEDGING THAT THERE IS RECOGNITION ALREADY AMONG ARGENTINA'S PPESIDENT AND JUNTA THAT THE COUNTRY'S SITUATION MUST BE NORMALIZED, THE COMMISSION MIGHT PRIVATELY INITIATE CONVERSATIONS ABOUT A PROGRAM OF REMEDIAL ACTION WITH THE COUNTRY'S LEADERSHIP. ALTHOUGH SPECIFIC REMEDIES AGREED AS NECESSARY AND FEASIBLE BETWEEN THE COMMISSION AND THE GOVERNMENT OF ARGENTINA MIGHT NOT HAVE THE LOOK OF HIGH HOPES AND PURITY THAT THE COMMISSION'S RECOMMENDATIONS ONLY MIGHT HAVE, WE BELIEVE THEY WOULD HAVE A BETTER CHANCE OF BEING PUT INTO PRACTICE.

7. HERE BELOW ARE SOME AREAS WE BELIEVE ARE PARTICULARLY IMPORTANT:

A) CENTRALIZATION. WE BELIEVE THE COMMISSION WILL FIND THAT THE GREATEST SINGLE FACTOR CONTRIBUTING TO HUMAN RIGHTS VIOLATIONS IS DECENTRALIZATION OF CONTROL AMONG A BEMILDERING, OFTEN MUTUALLY ANTAGONISTIC ARRAY OF OFFICIAL ENTITIES: THE ARMY, THE NAVY, THE AIR FORCE, THE FEDERAL POLICE, THE STATE INTELLIGENCE SERVICE (SIDE) AND THE FEDERAL SECURITY SERVICE -- WITH FURTHER BREAKAGE INTO SUB-GROUPS ALONG SEVERAL OF THESE. THE FIRST RECOMMENDATION OF THE COMMISSION SHOULD BE THAT CONTROL OVER SUPPRESSION OF REMAINING TERRORISM AND SUBVERSION BE CENTRALIZED AND RATIONALIZED AS A PRIMARY MEANS OF GETTING CONTROL OVER A SITUATION EVEN ARGENTINE MEMBERS OF GOVERNMENT (INCLUDING MILITARY MEN) AGREE ALLOWS AN EXCESS OF AUTONOMY.

B) LEGAL PROCESSES. THIS AREA IS DIFFICULT BECAUSE THE ARGENTINE CONSTITUTION RECOGNIZES STATE OF SEIGE PROVISIONS, BEHIND WHICH EVERY ACT OF THE EXECUTIVE POWER (THE "PODER EJECUTIVO NACIONAL" OR PEN) STANDS IN ORDER TO ESCAPE SCRUTINY BY THE REGULAR COURT SYSTEM. THIS POWER IS RECOGNIZED BY COURTS THEMSELVES. THEIR OPINIONS OFTEN CONTAIN INTRICATE LEGAL DISCOURSES THAT STOP SHORT BEFORE THE GREAT LEGAL WALL THAT STATE OF SEIGE POWERS CONSTITUTE. UNLESS THE COMMISSION CAN GAIN ACCEPTANCE BY THE EXECUTIVE POWER THAT AN ENTIRE NEW CONSTRUCT IS REQUIRED -- AN ENTIRE NEW AREA OF "INTERFACE" IN WHICH PEN POWER IS CIRCUMSCRIBED BY THE JUDICIARY -- THEN ANY ARGENTINE REGIME WILL BE FREE TO TREAT CITIZENS MORE OR LESS AS IT PLEASES. WITHOUT THESE BASIC NEW JURISDICTIONAL ARRANGEMENTS "JUDICIAL REFORM," ONE OF THE TENETS OF THE NATIONAL RE-ORGANIZATION PROCESS, WILL REMAIN A CYNICAL -- EVEN CRUEL -- SLOGAN. IN THIS CONNECTION THE COMMISSION SHOULD MAKE EFFORT TO TABULATE THOSE INSTANCES WHEN COURTS HAVE INDEED RISEN TO JUDGE AGAINST PEN ACTIONS ONLY TO MET WITH SILENCE ON THE PART OF THE GOVERNMENT.

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ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

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C) SUBVERSION/TERRORISM DEFINED. A PRINCIPAL PROBLEM IN BOTH CENTRALIZATION AND IN CREATING LEGAL REMEDIES AS EXPLAINED ABOVE DERIVED FROM THE ARGENTINE GOVERNMENT'S APPARENTLY LACKING DEFINITIONS OF "SUBVERSION" AND "TERRORISM" THAT COULD GUIDE EVEN WELL INTENTION SECURITY OFFICIALS AND DEDICATED JUDGES IN THEIR COMPLICATED CHOICES. THE COMMISSION MUST NOT ACT AS THOUGH IT EXPECTS ARGENTINA TO "RETURN" (COMMENT: THE COUNTRY WAS NEVER THERE) TO A SECURITY-LEGAL SYSTEM THAT WOULD STAND THE EXACTING REVIEW OF A WESTERN EUROPEAN OR US COURT. THIS PLAYS INTO THE HANDS OF "DIRTY WAR" THEORISTS WHO JUSTIFY ANY METHOD OF COMBAT ON GROUNDS THAT THE TERRORIST ONSLAUGHT AGAINST ARGENTINE WAS SIMPLY TOO GREAT FOR ITS LEGAL SYSTEMS TO STAND AGAINST THEM. THIS GOVERNMENT AND ITS FORESEEABLE SUCCESSORS ARE GOING TO GUARD AGAINST WHAT IS REGARDED AS ATTACKS AGAINST THE GOVERNING STRUCTURE. WHAT CAN BE REALISTICALLY IMAGINED -- AND THIS WOULD HAVE INCALCULABLE BENEFIT -- IS THAT WITH THE COMMISSION THE ARGENTINE GOVERNMENT MIGHT DEFINE (AFTER IN-HOUSE DEBATE MADE PUBLIC) WHAT IT CONSIDERS TO BE A "TERRORIST," AND IN DOING THIS ANNOUNCE WHAT PENALTIES A TERRORIST CAN EXPECT, AND WHAT IT CONSIDERS A "SUBVERSIVE" AND WHAT PENALTIES, IF ANY, ATTACH. AT PRESENT THE CATEGORIES "TERRORIST" AND "SUBVERSIVE" TOO EASILY SLIDE TOGETHER, AND A "SUBVERSIVE" CAN BE PRACTICALLY ANYTHING, INCLUDING A MOTHER DEMANDING TO KNOW THE WHEREABOUTS OF HER SON.

D) PRESENT AND PAST ANTI-TERRORIST/ANTI-SUBVERSIVE ACTIVITIES. THE COMMISSION IN ITS REPORTS AND ITS CONVERSATIONS SHOULD HIGHLIGHT THE RECENT DISAPPEARANCES AND RECENT EVIDENCE OF TORTURE AND MISTREATMENT THAT MAY COME ITS WAY. A FREQUENT ARGENTINE GOVERNMENT DEFENSE OF ITS ACTIVITIES IS THAT BAD THINGS HAPPENED IN THE BAD OLD DAYS, AND THAT THESE EVENTS ARE HISTORY. THEY ARE NOT. THEY CONTINUE TO OCCUR ALBEIT WITH DECREASING FREQUENCY. IT WILL BE BRACING FOR ARGENTINES TO REALIZE THE FREQUENCY WITH WHICH SERIOUS VIOLATIONS TAKE PLACE AT A TIME WHEN VIDELA, VIOLA, MASSERA, AGOSTI, LAMBRUSCHINI, HARGUINDEGUY HAVE EACH SAID -- IN ONE FORM OR ANOTHER -- "SUBVERSION IS LICKED AND NOW WE TURN TO THE PROCESS OF HEALING."

E) PEN PRISONERS. THE FACE OF THE COMMISSION'S COMING ALREADY HAS LED TO REDUCTION OF THE NUMBERS OF PEN PRISONERS. WE KNOW OF PLANS FOR IMPROVED PROCESSING

THE SYSTEM OPERATED BY THE CENTRAL GOVERNMENT, WOULD HELP THE SITUATION. WE BELIEVE A RECOMMENDATION BY THE COMMISSION FOR RELEASE UNDER RIGHT OF OPTION (AND CLEMENCY FOR PERSONS CONVICTED -- PERHAPS AFTER A SPEEDY REVIEW OF SOME SORT) MIGHT PROVIDE THE ARGENTINE GOVERNMENT AN INCENTIVE FOR DOING WHAT MANY PROFESS TO WANT TO DO ANYWAY: RELEASE PERSONS PICKED UP WHILE VERY YOUNG AND PERSONS WHOSE ONLY LINK WITH SUBVERSIVE ACTIVITIES WAS MARGINAL.

F) TORTURE. HOSTILE INTERROGATION WITH THE ELECTRIC PICANA, "THE CHENARINE," ETC. LIES AT THE HEART OF THE ARGENTINE REPRESSIVE SYSTEM. THIS IS AN AREA OF HUMAN RIGHTS ABUSE WHICH CAN BE CLEARLY AND FACTUALLY DOCUMENTED BY THE COMMISSION. THE COMMISSION SHOULD AND CAN WE BELIEVE DEMONSTRATE THAT TORTURE HAS BECOME A REGULARLY UTILIZED PROCEDURE IN CRIMINAL AS WELL AS SUBVERSIVE CASES. THE COMMISSION MIGHT POINT OUT THAT ACCEPTANCE OF TORTURE BY JUDICIAL AUTHORITIES WITHOUT TRIGGERING INQUIRIES AGAINST THE RESPONSIBLE MILITARY OR POLICE OFFICIALS HAS DEBASED THE SYSTEM OF JUSTICE AND AT VERY LEAST IS AN AREA WHERE PEN ACTIVITIES SHOULD BE SURED.

G) CLANDESTINE PRISONERS. IT IS HARD TO MAKE RECOMMENDATIONS IN THIS INSCRUTABLE AREA, FOR THEORIES RANGE BETWEEN THERE BEING "THOUSANDS" OF CLANDESTINE PRISONERS -- THESE OPINIONS BEING HELD, SADLY BUT NATURALLY, BY FAMILIES WHO KEEP ALIVE IN THIS WAY HOPE FOR THEIR MISSING RELATIVES -- TO THERE BEING VERY FEW. (COMMENT: THIS EMBASSY FAVORS THE SECOND VIEW, LESS FROM EVIDENCE THAN FROM FAILURE TO IMAGINE ANY PURPOSE TO BE SERVED BY THE ARMED FORCES' HOLDING A GREAT MANY UNDECLARED PRISONERS.) THE COMMISSION COULD URGE THE THREE ARMED FORCES AND THE POLICE TO RECOGNIZE ALL PRESENTLY HELD PRISONERS AND THEN TO DECLARE UNEQUIVOCALLY THAT THEY HOLD OTHERS. AS SEPTEL STATES (BUENOS AIRES 629) THIS IDEA IS FAVORED BY AN OFFICIAL OF THE INTERIOR MINISTRY AS A MEANS OF CONVINCING FAMILIES THAT THE DISAPPEARED ARE IN FACT DEAD. FINALLY, THIS IS AN AREA TO WHICH THE COMMISSION SHOULD PAY SPECIAL ATTENTION; EVERY BIT OF EVIDENCE THAT CAN BE GOTTEN ON THIS SUBJECT IS VALUABLE.

H) THE DISAPPEARED. THERE WILL BE NO REVIVING THE DEAD, BUT THERE ARE STEPS THE COMMISSION MIGHT URGE FOR ALLEVIATING THE PROBLEMS OF THE LIVING:

- 1) IT MIGHT URGE THE GOVERNMENT TO INFORM FAMILIES -- DIRECTLY OR THROUGH INTERMEDIARIES -- THAT EVIDENCE EXISTS A PERSON HAS DIED. 2) IT MIGHT SUGGEST LEGAL MEASURES BY WHICH PRESUMPTION OF A PERSON'S DEATH COULD BE MADE QUICKER AND SIMPLER -- THUS PERMITTING MYRIAD PRACTICAL TRANSACTION THAT NOW ARE IN ABEYANCE BECAUSE OF A FAMILY MEMBER'S UNCLEAR STATUS.
- 3) INFORMALLY, IT MIGHT RECOMMEND CLOSE CONSULTATION BETWEEN THE GOVERNMENT AND THE CATHOLIC CHURCH, SO THAT THE STATUS OF WIDOWS AND ORPHANS CAN MORE EASILY BE DEFINED FOR BELIEVERS BY THE CLERGY THEY CONSULT.
- 4) IT MUST INSIST THAT THE GOVERNMENT SEEK TO IDENTIFY BODIES THAT TURN UP IN MYSTERIOUS CIRCUMSTANCES, THE APPARENT RESULT OF GOVERNMENT'S REPRESSION.

CASTRO

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